

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-341

13
14 **JOSHUA DAVID BLACKSHER**
15 **2241 S. Elderberry Avenue**
16 **Ontario, CA 91762-6011**
17 **Registered Nurse License No. 719811**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about October 29, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs, filed Accusation No. 2013-341 against Joshua David Blacksher
24 ("Respondent") before the Board of Registered Nursing. Accusation No. 2013-341 is attached as
25 Exhibit 1 to the Default Decision Investigatory Evidence Packet and is hereby incorporated by
26 reference.
27
28

1 2. On or about February 8, 2008, the Board of Registered Nursing ("Board") issued
2 Registered Nurse License No. 719811 to Respondent. The Registered Nurse License was in full
3 force and effect at all times relevant to the charges brought in Accusation No. 2013-341 and will
4 expire on June 30, 2013, unless renewed.

5 3. On or about October 29, 2012, Respondent was served by Certified and First Class
6 Mail copies of the Accusation No. 2013-341, Statement to Respondent, Notice of Defense,
7 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
8 and 11507.7) at Respondent's address of record which, pursuant to California Code of
9 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.
10 Respondent's address of record with the Board was and is:

11 **2241 S. Elderberry Avenue**
12 **Ontario, CA 91762-6011.**

13 4. Service of the Accusation was effective as a matter of law under the provisions of
14 Government Code section 11505, subdivision (c) and Business & Professions Code ("Code")
15 section 124.

16 5. On or about November 5, 2012, the Domestic Return Receipt, for the aforementioned
17 documents served via Certified Mail, was returned to the Board indicating that the documents
18 were delivered at the above address on November 1, 2012. The aforementioned documents served
19 via First Class Mail were not returned by the U.S. Postal Service marked as undeliverable.

20 6. Government Code section 11506 states, in pertinent part:

21 (c) The respondent shall be entitled to a hearing on the merits if the respondent
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts
23 of the accusation not expressly admitted. Failure to file a notice of defense shall
24 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
25 may nevertheless grant a hearing.

26 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
27 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
28 2013-341.

29 8. California Government Code section 11520 states, in pertinent part:

30 (a) If the respondent either fails to file a notice of defense or to appear at the
31 hearing, the agency may take action based upon the respondent's express admissions

1 or upon other evidence and affidavits may be used as evidence without any notice to
2 respondent.

3 9. Pursuant to its authority under Government Code section 11520, the Board finds
4 Respondent is in default. The Board will take action without further hearing and, based on the
5 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
6 taking official notice of all the investigatory reports, exhibits and statements contained therein on
7 file at the Board's offices regarding the allegations contained in Accusation No. 2013-341, finds
8 that the charges and allegations in Accusation No. 2013-341, are separately and severally, found
9 to be true and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$4,507.00 as of November 27, 2012.

13 DETERMINATION OF ISSUES

14 1. Based on the foregoing findings of fact, Respondent Joshua David Blacksher has
15 subjected his Registered Nurse License No. 719811 to discipline.

16 2. The agency has jurisdiction to adjudicate this case by default.

17 3. The Board of Registered Nursing is authorized to revoke Respondent's Registered
18 Nurse License based upon the following violations alleged in the Accusation which are supported
19 by the evidence contained in the Default Decision Evidence Packet in this case.:

20 a. **Unlawfully Used a Controlled Substance.** Respondent is subject to disciplinary
21 action under Code section 2762, subdivision (a), in that Respondent unlawfully
22 administered to himself a controlled substance, to wit, Morphine. The conduct is
23 more particularly described as follows:

24 i. On or about May 25, 2011, Respondent was working in his capacity as a
25 registered nurse in the orthopedic unit at Pomona Valley Hospital Medical
26 Center in Pomona, California.

27 ii. On or about that same date, a patient that was assigned to Respondent for
28 care complained that Respondent bumped into things with the medication

1 cart, fumbled when putting on his gloves, administered morphine to the
2 patient even though the patient did not request pain medication, and made
3 the patient feel uncomfortable.

4 iii. On or about that same date, because Respondent appeared to be under the
5 influence of a controlled substance, he was asked to submit to a drug test.
6 The urine sample provided by the Respondent tested positive for the
7 presence of Morphine. As a result, Respondent was terminated from at
8 Pomona Valley Hospital Medical Center effective May 27, 2011.

9 iv. Use of drugs is extremely harmful to workers' health, interferes with
10 productivity and alertness, and a worker under the influence of drugs is a
11 danger to patients, associates, visitors, and property.

12 b. **Dangerous Use of Drugs.** Respondent is subject to disciplinary action under
13 Code section 2762, subdivision (b), in that Respondent used morphine in a
14 manner dangerous to himself, any other person, or the public or to the extent that
15 such use impairs his ability to conduct with safety to the public, the practice
16 authorized by his license. The conduct is more particularly described in paragraph
17 3, subparagraphs (a)(i-iv), inclusive, above, and is herein incorporated by
18 reference.

19 c. **Unprofessional Conduct.** Respondent is subject to disciplinary action under
20 Code section 2761, subdivision (a), in that Respondent engaged in unprofessional
21 conduct. The conduct is more particularly described in paragraph 3,
22 subparagraphs (a)(i-iv), inclusive, above, and is herein incorporated by reference.

23 ///

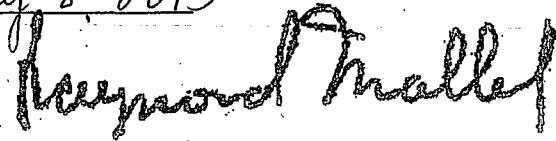
ORDER

IT IS SO ORDERED that Registered Nurse License No. 719811, heretofore issued to Respondent Joshua David Blacksher, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 8, 2013.

It is so ORDERED February 8, 2013



FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

51197457.DOC
DOJ Matter ID:LA2012507883

Exhibit A

Accusation Case No. 2013-341

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2013-341

11 **JOSHUA DAVID BLACKSHER**
12 **2241 S. Elderberry Avenue**
13 **Ontario, CA 91762-6011**

A C C U S A T I O N

14 **Registered Nurse License No. 719811**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about February 8, 2008, the Board of Registered Nursing issued Registered
22 Nurse License Number 719811 to Joshua David Blacksher ("Respondent"). The Registered
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and
24 will expire on June 30, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

STATUTORY PROVISIONS

5. Section 118, subdivision (b), of the Code provides, in pertinent part:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2761 of the Code provides, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following: . . .”

8. Section 2762 of the Code provides, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code,

1 or any dangerous drug or dangerous device as defined in Section
2 4022, or alcoholic beverages, to an extent or in a manner dangerous
3 or injurious to himself or herself, any other person, or the public or
to the extent that such use impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license..."

4 9. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
5 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
6 licensee or to render a decision imposing discipline on the license.

7 **DRUG DEFINITIONS**

8 10. **Morphine** – a Schedule II controlled substance pursuant to Health and Safety Code
9 section 11055, subdivision (b)(1)(L), and a dangerous drug pursuant to Business and Professions
10 Code section 4022. Morphine is the generic name for the brand name drug MS Contin and is used
11 to treat pain.

12 **COST RECOVERY**

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licensee found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Unlawfully Used a Controlled Substance)**

19 12. Respondent is subject to disciplinary action under Code section 2762, subdivision
20 (a), in that Respondent unlawfully administered to himself a controlled substance, to wit,
21 Morphine. The conduct is more particularly described as follows:

22 13. On or about May 25, 2011, Respondent was working in his capacity as a registered
23 nurse in the orthopedic unit at Pomona Valley Hospital Medical Center in Pomona, California.

24 14. On or about that same date, a patient that was assigned to Respondent for care
25 complained that Respondent bumped into things with the medication cart, fumbled when putting
26 on his gloves, administered morphine to the patient even though the patient did not request pain
27 medication, and made the patient feel uncomfortable.

28 15. On or about that same date, because Respondent appeared to be under the

1 influence of a controlled substance, he was asked to submit to a drug test. The urine sample
2 provided by the Respondent tested positive for the presence of Morphine. As a result, Respondent
3 was terminated from at Pomona Valley Hospital Medical Center effective May 27, 2011.

4 16. Use of drugs is extremely harmful to workers' health, interferes with productivity
5 and alertness, and a worker under the influence of drugs is a danger to patients, associates,
6 visitors, and property.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Dangerous Use of Drugs)**

9 17. Respondent is subject to disciplinary action under Code section 2762, subdivision
10 (b), in that Respondent used morphine in a manner dangerous to himself, any other person, or the
11 public or to the extent that such use impairs his ability to conduct with safety to the public, the
12 practice authorized by his license. The conduct is more particularly described in paragraphs 13
13 through 16, inclusive, above, and is herein incorporated by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct)**

16 18. Respondent is subject to disciplinary action under Code section 2761, subdivision
17 (a), in that Respondent engaged in unprofessional conduct. The conduct is more particularly
18 described in paragraphs 13 through 16, inclusive, above, and is herein incorporated by reference.

19 **PRAYER**

20 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
21 and that following the hearing, the Board of Registered Nursing issue a decision:

22 1. Revoking or suspending Registered Nurse License Number 719811, issued to Joshua
23 David Blacksher;

24 2. Ordering Joshua David Blacksher to pay the Board of Registered Nursing the
25 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
26 Professions Code section 125.3; and

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Taking such other and further action as deemed necessary and proper.

DATED: October 29, 2012 *Janie B...*

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2012507883
51173942.doc